IN THE HIGH COURT OF BOMBAY AT OA
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WRIT PETITION NO. 257 OF 2003

1. Mrs. Emedia Conceicao
   Do Rosario Fonseca e
   Correia, major, married,
   housewife,

2. Mr. Hilary R.Correia,
   major, retired, both
   r/o H.No.796, c/o
   Zeferino D'Souza,
   Portawado, Siolim,
   Bardez, Goa. ... Petitioners.

Versus

1. Mr. Santan Cipriano Fonseca,
   major, agriculturist,

2. Mr.Agnelo Fonseca,
   major, Agriculturist,

3. Mr. Paul Fonseca, major,
   agriculturist,

4. Mr. Peter Fonseca, major,
   business,

5. John Fonseca, major,
   agriculturist,

6. Mr. Anthony Fonseca,
   major, agriculturist,
   all r/o H. No. 1481, Madel,
   Tivim, Bardez, Goa. ... Respondents.

Shri S. D. Lotlikar, Senior Advocate with Shri A.D. Bhobe, advoate for the petitioners.

Shri M. S. Sonak, advocate for the respondent nos.1 to 6.

CORAM : F. I. REBELLO, J.

DATE : 1st August, 2003

ORAL ORDER

By the present petition, the petitioner seeks to impugn the order dated 24th February, 2003 in Misc. Civil

Appeal No. 116 of 2000, whereby the trial Court has set aside the Order of the trial Court granting temporary mandatory injunction. A suit was filed by the present petitioners against the respondents for a permanent injunction. An application was taken out for temporary injunction. At the interim stage, the learned trial Court was pleased to pass an order of status quo. Thereafter the petitioners herein moved for a temporary mandatory injunction contending that the petitioners herein had been dispossessed by the respondents when the order of status quo was in force and, consequently prayed for an injunction by way of temporary mandatory injunction, which was granted by the trial Court. The Appellate Court reversed that Order and, consequently, the present Writ Petition.

2. From the records it is clear at least at the prima facie stage, that both the parties claim a right in the property. Proceedings by the father of the present petitioners which included relief of declaration that the respondents have no right in the property has been rejected consequent to the dismissal of the suit. In the survey records the property is shown in the name of both the parties. Though the father of the present petitioners applied for deletion of the name of the respondents from said survey entries, it was not applied for insofar as the present property was concerned. That application was rejected. A subsequent application was made which was

allowed, but on application by the respondents that was set aside. In other words, so far as survey records are concerned, the names of both the petitioners and the respondents are shown.

3. The real question would be whether the petitioners have been able to show as to who was in possession. That is purely an appreciation of evidence. It is no doubt true that the learned counsel for the petitioner sought to bring to the attention of this Court that there was a lease deed by the petitioners herein in favour of one German and it must be held that therefore it was the petitioner who were in possession and gave possession to the said German, Mr. Kalenburn Heinz, who has also filed an affidavit in support of the application taken out by the petitioners herein. That would be appreciation of evidence.

The intervention of this Court in exercise of its extraordinary jurisdiction is not called for as there is no error apparent on the face of the record. Mere mis-appreciation of the evidence by itself does not tantamount to error apparent on the face of the record. Considering the above, to my mind, no interference is called for. Petition rejected.

F. I. REBELLO, J.